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No.

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In the

Supreme Court of the United States

OCTOBER TERM, 1983

In Re WALTER POLOVCHAK
(STATE OF ILLINOIS,

Petitioner,

vs.

MICHAEL POLOVCHAK and ANNA POLOVCHAK,
Respondents.)

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

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QUESTIONS PRESENTED

1.

Whether a child may be placed under state control, possibly until he becomes an adult, without any finding that such control is necessary for his welfare or protection?

2.

Whether a sixteen year old boy who is lawfully in the United States and wishes to remain in this country should be forcibly returned to the Soviet Union?

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PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

Petitioner, the State of Illinois, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Illinois Supreme Court which was entered on May 27, 1983.

OPINION BELOW

The opinion of the Illinois Supreme Court is reported as *In re Polovchak,* 97 Ill. 2d 212, 454 N.E.2d 258 (1983). That opinion is reproduced as Appendix A of this Petition. The order of the Illinois Supreme Court denying a petition for rehearing is reproduced as Appendix B of this Petition.

JURISDICTION

The opinion and judgment of the Illinois Supreme Court was entered on May 27, 1983. The State of Illinois filed a timely Petition for a Rehearing, which was denied on September 30, 1983. This Petition for a Writ of Certiorari is filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTION PROVISION AT ISSUE

FOURTEENTH AMENDMENT, (Due Process and Equal Protection Clauses):

. . . nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

Walter Polovchak is a sixteen year old boy who wants to remain in the United States. His parents want him to be forcibly deported to the Soviet Union. The State of Illinois has been cooperating with Walter and his attorneys in the Illinois courts in an effort to keep him from being forcibly deported.

The Illinois Supreme Court has held that under the applicable statute Walter was not subject to Juvenile Court jurisdiction. That interpretation of a state statute is not challenged in this Petition. However the Illinois Supreme Court remanded the matter to the Juvenile Court with directions to retain control over Walter, possibly until he becomes an adult. Since there was no finding that such control is necessary for Walter's protection or welfare, the remand is challenged in this Petition as a denial of due process.

Walter Polovchak was born in the Ukrainian Soviet Socialist Republic on October 3, 1967. In January, 1980, Walter and his family emigrated to Chicago. (Tr. 185) Walter's family included his father Michael Polovchak, his mother Anna Polovchak, his sister Natalie (then age 17) and his brother Michael (then age 5). The family lived with relatives in Chicago, eventually moving in with Walter Polovczak (cousin Walter), the 24 year old son of Mr. Polovchak's sister.

Mr. Michael Polovchak, however, changed his mind about living in the United States and decided to return to the Soviet Union. In the spring of 1980 he applied for permission to return to the Ukraine. (Tr. 186-187) The decision caused an intense conflict within the Polovchak family which lasted for several months.

Walter and Natalie decided that they wanted to remain in the United States. The parents violently objected to Walter's decision. It is undisputed that Mr. Polovchak threatened to kill cousin Walter and Natalie if they interfered with Walter. (Tr. 137, 148) There was testimony that Mr. Polovchak said that if anyone tried to interfere with Walter "blood will run." Walter testified that his father told him that the police in America could be bribed, and that he would pay off the police to tie Walter up and put him on a plane to the Soviet Union. (Tr. 173, 209)

Meanwhile, cousin Walter, after arguments with Mr. Polovchak, had moved into another apartment. (Tr. 188) Natalie decided that she could not stand it any more, and that she was going to move out. (Tr. 151) Walter told her that he wanted to move out too, but Natalie told him that he could not go with her. (Tr. 154) But Walter

told Natalie that unless he could go with her he would run away by himself. (Tr. 151, 154)

On July 13, 1980, Walter and Natalie left home to go to church, but did not return. (Tr. 110-112) Instead they went to live with their cousin Walter, where they stayed until their parents sent the police to find them.

At first, the parents had no idea where Walter was staying. Walter did return home once with some friends to get his belongings, but he refused to tell his mother where he was going to live. (Tr. 112-117, 164) But on July 18, Mr. Polovchak obtained a possible phone number for Walter, and took it to Sergeant Leo Rojek of the Chicago Police Department. (Tr. 216) Sergeant Rojek traced the number and found Walter. (Tr. 216-218)

Walter refused to return to the home of his parents, so Sergeant Rojek filed a petition alleging that Walter was a minor in need of supervision. (MINS). The MINS provisions of the Illinois Juvenile Court Act, which have since been repealed, stated that the court could intervene when a minor was beyond the control of his parents. Ill. Rev. Stat. 1979, Ch. 37, sec. 702-3 (repealed).

After a hearing in Juvenile Court, Walter was placed in the temporary custody of the Department of Children and Family Services. (Tr. 52) Later Walter entered an admission to the allegation that he was a minor in need of supervision, and a hearing was held to determine if there was a factual basis for that plea. (Tr. 81-85) At that hearing Walter testified that he would have left home whether there had been a place for him to stay or not, and that he would refuse to return home if the case was dismissed. (Tr. 169-176) Later the judge was informed by Walter's social worker that Walter had repeatedly

threatened to kill himself if forced to return home. (Tr. 335-336)

The judge found Walter to be a minor in need of supervision, and set the matter for a dispositional hearing. (Tr. 235) At the dispositional hearing it would be decided whether Walter would be returned to his parents or not. But the parents prevented a dispositional hearing from being held by taking an interlocutory appeal from the order finding Walter to be a minor in need of supervision. (Sup. Tr. 2-16) While that appeal was pending the parents returned to the Soviet Union without Walter. In the meantime Walter had been granted political asylum by the federal government.

The Appellate Court of Illinois reversed the finding of the Juvenile Court without any remand. *In the Interest of Polovchak,* 104 Ill. App. 3d 203, 432 N.E.2d 873 (1st Dist. 1981). The Illinois Supreme Court granted leave to appeal, and ruled that the Juvenile Court had erred in taking jurisdiction over Walter. (Appendix A) However, the Illinois Supreme Court remanded the matter to the Juvenile Court with directions to retain jurisdiction over Walter until one of his parents returned to the United States. If neither of the parents were to return, the Juvenile Court is to retain control over Walter for an indefinite period of time. (Appendix A, p. 13a)

REASONS FOR GRANTING THE WRIT

I.

IT IS A VIOLATION OF WALTER POLOVCHAK'S RIGHT TO DUE PROCESS AND FAMILIAL PRIVACY TO PLACE HIM IN THE CONTROL AND CUSTODY OF THE JUVENILE COURT, POSSIBLY UNTIL HE BECOMES AN ADULT, WITHOUT ANY FINDING THAT SUCH CUSTODY IS NECESSARY FOR HIS WELFARE OR PROTECTION.

The Illinois Supreme Court ruled that Walter Polovchak was not a minor in need of supervision and therefore was not subject to Juvenile Court jurisdiction. This interpretation of a state statute by the highest court of Illinois is not challenged in this Petition. Ill. Rev. Stat. 1979, Ch. 37, sec. 702-3 (repealed); *Agins* v. *City of Tiburon*, 447 U.S. 255, 259 fn. 6 (1980). However the Illinois Supreme Court then contradicted itself and remanded the case to the Juvenile Court with directions to maintain control and custody over Walter for an indefinite period of time. The remand with directions violated Walter's rights under the United States Constitution in at least two ways:

1. It violates Walter's right to due process of law in that it permits him to be placed in state custody for an indefinite period of time without any finding that such custody is necessary to Walter's welfare or protection.

2. It violates Walter's right to familial privacy in that it permits state intervention in the affairs of Walter's family without any finding that there is any state interest justifying such intervention.

These issues, particularly that involving familial privacy, present novel and important questions which should be decided by this Court. As yet this Court had not fully defined the extent of a minor's right to due process in custody proceedings or the extent of a minor's right to familial privacy.

Due Process

The remand of the Illinois Supreme Court could result in Walter being placed in state custody until he becomes an adult. The specific terms of the remand are as follows:

> . . . we believe the appropriate disposition of this case is to remand it to the circuit court of Cook County with directions that it retain jurisdiction of Walter and this cause pending the return of Walter's parents, or either of them, to this country, in which event Walter's custody shall be given to the returning parent. In the event that neither Michael nor Anna Polovchak shall return, the circuit court shall proceed in the manner it deems best suited to Walter's needs. (Appendix A, p. 13a)

There is no statute, rule or precedent giving an Illinois Juvenile Court the right to exercise control over a minor in a situation like this, where the finding of the Juvenile Court had been reversed because of insufficient evidence. Therefore the short paragraph just quoted provides the only guidance to the Cook County Juvenile Court concerning what it should do with Walter.

Therefore Walter could be placed in the custody of any agency or person for an indefinite period of time. For example, Walter could be kept in the custody of the Illinois Department of Children and Family Services, which would have discretion to place him in any institution or

foster home. There is no finding that such custody is necessary for Walter's welfare or protection. There is no time limitation, except that Juvenile Court control over Walter is to last until one of his parents returns to this country or until he becomes an adult. There is no limit on the discretion of the Juvenile Court, except that it ". . . shall proceed in the manner it deems best suited to Walter's needs." (Appendix A, p. 13a) There is not even any requirement that the Juvenile Court conduct a hearing. There is no indication that Walter or his attorneys will have any say about what happens to him.

There could hardly be a more clear violation of due process than to place a person in custody without a hearing, according to no legal standard, and without any finding that such custody is necessary for any purpose. This Court should accept jurisdiction so that Walter and other minors will not be arbitrarily placed in foster homes or institutions by a state.

It is true that the Juvenile Court of Cook County originally found, under a provision which has since been repealed, that Walter was a minor in need of supervision. (Tr. 235) Ill. Rev. Stat. 1979, Ch. 37, sec. 702-3 (repealed). It is also true that the Juvenile Court found that it was a matter of immediate and urgent necessity that Walter be placed in the custody of the Department of Children and Family Services. (Tr. 11, 52) But the Illinois Supreme Court reversed both findings, ruling that they were not supported by the evidence. (Appendix A, pp. 9a-12a) Thus as of now the only judicial findings ever made concerning Walter have been vacated on appeal. Since the Illinois Supreme Court vacated the findings of the Juvenile Court, and made

no new findings of its own, there is nothing to justify holding Walter in custody.

Nor can the fact that Walter is sixteen years old, and that his parents have returned to the Soviet Union without him, justify subjecting Walter to the control of the Juvenile Court. It is well established that constitutional rights are not reserved exclusively for adults, but apply to minors as well. *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976); *In re Winship*, 397 U.S. 358 (1970); *Ginsberg* v. *New York*, 390 U.S. 629 (1968); *In re Gault*, 387 U.S. 1 (1967). Therefore the absence of Walter's parents could not justify placing him under the control of the Juvenile Court unless there was a finding that Walter could not take care of himself and that there was no relative or friend who could take care of him. No such finding exists. In fact the record indicates that Walter has a cousin in Chicago, an aunt and uncle in Chicago, and an aunt in Santa Barbara who are willing and anxious to provide him with a home. (Tr. 111-112, 211-212, 339-340) Since there is no finding that state custody over Water is necessary for his welfare or protection, the remand subjecting him to the control of the Juvenile Court is unconstitutional.

There are, of course, numerous precedents indicating that a person may not be placed under state custody or control without a finding that such custody or control is necessary for the protection of that person or of others. *O'Connor* v. *Donaldson*, 422 U.S. 563 (1975); *McNeil* v. *Director, Patuxent Institution*, 407 U.S. 245 (1972); *Jackson* v. *Indiana*, 406 U.S. 715 (1972). In Walter's case there had been no hearing and no finding

that Juvenile Court control over Walter is necessary for his protection. As this Court said in *O'Connor*:

> In short, a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends. 422 U.S. at 576.

The record here indicates that Walter is fully capable of taking care of himself with the help of his relatives. But the terms of the Illinois Supreme Court's remand dismiss such considerations as irrelevant. The remand gives no weight to the desires of Walter and his attorneys. Therefore the order that the Juvenile Court take control over Walter for an indefinite period violates due process of law.

In addition, a person who has committed no crime may be placed in state custody only if there is a valid state interest outweighing the person's liberty interests. *Youngblood* v. *Romeo*, 457 U.S. 307, 102 S.Ct. 2452, 2461 (1982). There has been no finding here (except those reversed on appeal) that there is any state interest in Juvenile Court control over Walter.

Thus the Illinois Supreme Court has ordered that the Juvenile Court assume control and custody over Walter even though there has been no finding that such control is necessary for Walter's protection or for any other purpose. This Court should accept jurisdiction in order to correct this clear violation of due process of law.

Familial Privacy

The remand of the Illinois Supreme Court permits the Juvenile Court to place Walter in the custody of

any agency or person for an indefinite period of time. The consent of Walter or his parents is not required. Therefore the terms of the remand violate Walter's right to familial privacy.

Over the last two decades this Court had handed down a line of cases limiting intervention in family affairs. In many areas this right to familial privacy has not been clearly defined. But the basic principle seems to be that any intervention in family matters must be justified by some compelling state interest. Since there has been no finding that any state interest will be served by subjecting Walter to the control and custody of the Juvenile Court, the terms of the remand violate Walter's right to familial privacy.

The right to familial privacy was first stated in cases dealing with birth control and abortion. *Griswold* v. *Connecticut*, 381 U.S. 479 (1965); *Roe* v. *Wade*, 410 U.S. 113 (1973). This Court held that various constitutional guarantees create a zone of privacy surrounding marital and family matters. This zone of privacy, this Court stated, may be overcome only by a compelling state interest.

The right to familial privacy was extended to matters relating to child custody and care. *Santosky* v. *Kramer*, 455 U.S. 745 (1982); *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972); *Stanley* v. *Illinois*, 405 U.S. 645 (1972). *Santosky*, *Yoder* and *Stanley* each involved a different factual situation, but the reasoning used by this Court in each case was similar. In each case it was held that any intervention in family affairs must be subjected to a balancing test in which the state interest in the care and protection of children must be weighed against the

right of familial privacy. In the absence of an overriding state interest, governmental intervention in family affairs is forbidden.

In the cases just cited the right to familial privacy was asserted by parents or potential parents. However, this Court had held that the right to familial privacy may be asserted by a minor as well as an adult. *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976). In fact, in *Planned Parenthood* v. *Danforth*, this Court held that in some circumstances the right to familial privacy may operate in favor of a child and against parents. In that case it was held that a parent could not be given an absolute veto over the right of a minor girl to seek an abortion. This Court said:

> Constitutional rights do not mature and come into being magically when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights. 428 at 74.

Therefore a minor may assert the right to familial privacy even against a parent.

This is in accord with the statement of this Court in *Moore* v. *City of East Cleveland*, 431 U.S. 494 (1977). In *Moore*, it was stated that familial privacy extended not only to the nuclear family, but also to other family relationships, such as those involving uncles, aunts, cousins and grandparents. Therefore family members other than parents can assert a right to familial privacy. In addition, familial privacy applies to any decision by Walter to live with his cousin, uncle or aunts.

The remand of the Illinois Supreme Court allows the Juvenile Court to place Walter in the custody of

any agency or person. There is no finding that there is any compelling state interest that would override Walter's constitutional right to familial privacy. Also, there is no finding or indication that Walter is unable to care for himself with the help of his relatives. Therefore this Court should accept jurisdiction in order to reverse the invasion of Walter's right to familial privacy.

Equal Protection

The terms of the Illinois Supreme Court's remand in this case also raise serious problems of equal protection. Currently in Illinois there is no legal requirement that a minor remain in the home of his parents. The police are specifically forbidden from returning a runaway minor to his home unless the minor consents. Ill. Rev. Stat. 1983, Ch. 37, secs. 703-1.1(c), 703-1.1(d). The Juvenile Court may not act when a minor leaves home unless three weeks have passed and the family has first been referred to a crisis intervention center. Ill. Rev. Stat. 1983, Ch. 37, sec. 702-3.

The Illinois Supreme Court has ordered that Walter be placed under the control of the Juvenile Court until one of his parents returns to the United States, and that then Walter must be placed in the custody of that parent, (Appendix A, p. 13a) Thus Walter is being treated differently from every other child in Illinois who has run away from home or who wants to live apart from his parents. Equal protection requires that persons similarly situated be treated in a similar fashion. *Plyler* v. *Doe,* 457 U.S. 202 (1982). Therefore the terms of the remand in this case violate Walter's right to equal protection of law.

Standing

The State of Illinois has filed this Petition because it has been a party to this case from the start and has a duty under both statute and case law to try to protect Walter's rights. Under the Illinois Juvenile Court Act the State is a party to all Juvenile Court proceedings. Ill. Rev. Stat. 1981, Ch. 37, sec. 701-21. Accordingly, the State played a leading part in every hearing in the Cook County Juvenile Court, filed a brief as a party in the Appellate Court of Illinois, and filed a petition for leave to appeal, a brief, and a petition for rehearing in the Illinois Supreme Court. The statute making the State a party to all juvenile proceedings merely restates the traditional duty of a government to assert the rights of minors when the parents are unwilling or unable to do so. *Kent* v. *United States*, 383 U.S. 541, 554-555 (1966); *In re Jennings*, 68 Ill. 2d 125, 368 N.E.2d 864 (1977); *People* v. *Shoos*, 15 Ill. App. 3d 964, 305 N.E.2d 560 (1st Dist. 1973).

In addition, the State of Illinois has a specific interest in the outcome of this matter. At present the Illinois Department of Children and Family Services is the custodian of Walter. (Tr. 11, 52) The State has a strong interest in assuring that its custody of Walter is either continued or vacated in accordance with the provisions of the United States Constitution. As custodian of Walter for the last three years, the State of Illinois has an interest in the outcome of this case and standing to request that Walter's constitutional rights be observed.

In any event, Walter will file his own petition requesting a grant of certiorari. Walter's standing is undeniable.

Conclusion

The Illinois Supreme Court had ordered that Walter be placed under the control and custody of the Juvenile Court for an indefinite period although there had been no finding that such control and custody are necessary for Walter's protection or for any other purpose. Thus the remand with directions clearly violates Walter's right to due process of law.

Nevertheless there are novel and important constitutional issues presented by this case. This Court has not yet clearly defined the due process rights of minors in custody hearings, the extent of a minor's right to familial privacy, or the degree to which minors can assert constitutional rights against their parents. This Court should grant certiorari in order to correct the violation of Walter's due process rights and in order to deal with these important issues of constitutional law.

II.

THIS COURT SHOULD GRANT CERTIORARI IN ORDER TO PREVENT THE FORCIBLE AND ILLEGAL REMOVAL OF WALTER POLOVCHAK FROM THE UNITED STATES.

The remand with directions of the Illinois Supreme Court could make it possible for Walter to be forcibly and illegally removed from the United States. If that were to happen neither this Court nor any other American court would have any power to protect his rights.

The Illinois Supreme Court has ordered that if either of Walter's parents return to this country, then Walter is to be placed in their custody. But if the parents were to regain custody, it is almost certain that they

would try to remove Walter from this country and take him to the Soviet Union. The Illinois Supreme Court has not provided any safeguards to prevent this.

The executive branch of the federal government has granted political asylum to Walter, and has issued a departure control order to prevent his removal from the United States. The validity of those orders is presently being litigated in the United States District Court for the Northern District of Illinois. *Polovchak* v. *Landon*, No. 80 C 5595. However, this Court need hardly be reminded that the United States does not have perfect control over its boarders. See *Plyler* v. *Doe*, 457 U.S. 202 (1982). If the parents had custody of Walter and the assistance of the Soviet government they might well be able to remove Walter from the United States.

Whatever may have been the case in 1980, it certainly would not be in Walter's interests now to be forcibly removed to the Soviet Union. If that were to happen it would be a permanent blot on the record of this country's judicial system. When this litigation began, Walter was living with his cousin and not with his parents. It was the parents who began state intervention by sending the police after Walter. This Court should grant certiorari in order to assure that Walter's future will be determined by law and not by force.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Illinois Supreme Court.

Respectfully submitted,

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APPENDIX A

May 27, 1983

Docket Nos. 56552, 56572

In re WALTER POLOVCHAK, Appellee and Appellant

(The People of the State of Illinois, Appellant and Appellee).

JUSTICE UNDERWOOD delivered the opinion of the court:

On July 19, 1980, pursuant to a petition for adjudication of wardship, the circuit court of Cook County appointed a guardian *ad litem* for 12-year-old Walter Polovchak, and, over the objection of Walter's parents, Michael and Anna Polovchak (the Polovchaks) placed the boy in the temporary custody of the Illinois Department of Children and Family Services (DCFS). Walter was subsequently found to be a minor in need of supervision and adjudged a ward of the court under the Juvenile Court Act (Ill. Rev. Stat. 1979, ch. 37, pars. 702—3(a), 704—8). Temporary custody remained in DCFS with supervised visits arranged between Walter and his parents. Prior to the dispositional hearing, Michael and Anna Polovchak filed an interlocutory appeal pursuant to Rule 662 (73 Ill. 2d R. 662). A divided appellate court reversed (104 Ill. App. 3d 203), and we allowed the petitions of both the State and Walter for leave to appeal.

Michael and Anna Polovchak, and their three children, Natalie, age 17, Walter, and Michael, age 5, arrived in the United States from their homeland, the Ukrainian Soviet Socialist Republic, in January 1980. The family spent the first few weeks in Chicago with Mr. Polovchak's sister and her husband before moving to an apartment on the northwest side of Chicago with Mr. Polovchak's 24-year-old nephew, Walter Polovchak (cousin Walter).

Although both parents apparently began working in Chicago, they decided, after a few months, to return to the Ukraine. Natalie decided that she did not want to return with her parents, and Walter, although initially undecided, determined that he, too, wanted to remain in this country. Mr. Polovchak did not challenge his daughter's decision; however, he was adamantly opposed to allowing Walter to remain in this country. Apparently there was considerable tension between cousin Walter and the Polovchaks, who believed that the cousin was encouraging their son to remain in this country.

Cousin Walter secured another apartment and began moving, apparently on July 12. He and Natalie had had a conversation prior to the move, and it was decided that Natalie would move with her cousin. Walter also told his cousin that he would be joining in the move. The parents were apparently aware of some of these arrangements because on Saturday night, July 12, there was a heated family argument during which Mr. Polovchak, who was quite upset, demanded to know why Natalie was taking his son away.

The next morning, pursuant to a prearrangement, cousin Walter met Natalie and Walter a block or two from the parents' apartment and the three went to church. After lunch, they returned to a point near the parents' apartment, and, while the two Walters waited there, Natalie went alone to the apartment to get some of her belongings. She and her father argued about Walter, and the father followed her to the bus stop. Walter and his cousin apparently saw the father approaching and left. Later that day, Natalie joined her brother and cousin at the latter's apartment, where the three spent the night.

The following day, July 14, Natalie, her brother and cousin, and two adult friends of cousin Walter's went to the parents' apartment with two vehicles. The parents were at work, but as Natalie and Walter began gathering their belongings, their mother arrived. She attempted to

learn where they were taking her son but was rebuffed. Her son, speaking to her in Ukrainian, said something to the effect that she should not be concerned. Natalie and Walter spent the next four days at their cousin's apartment, and while no one informed the parents of their whereabouts, it is clear from the record that the Polovchaks knew that their children were together and with cousin Walter but did not know where his apartment was located. Cousin Walter contacted his attorney (who later became counsel for Natalie and Walter) on July 14 or 15.

On July 18, Mr. Polovchak went to a Chicago police station with an interpreter to attempt to find his son. According to a report filed by Sergeant Leo Rojek, Mr. Polovchak stated that Natalie had enticed Walter to run away from home rather than return to the Ukraine, and she was hiding him in cousin Walter's apartment. After apparently receiving a telephone number for cousin Walter's place of employment, the police ascertained his home address; they subsequently went to the apartment, located Walter, and took him back to the station.

After arriving at the station, Walter was asked why he ran away from home. He responded that his father intended to return to the Ukraine, but that he wanted to stay in this country. The police then contacted the United States Immigration and Naturalization Service and the Department of State and were instructed by officials from the Department of State that Walter was not to be returned to his parents. The police also contacted a Cook County judge who recommended that Walter be detained overnight as a runaway and brought to juvenile court the following morning. At some point during the processing, Natalie and cousin Walter's attorney, whom the cousin had apparently retained to represent Walter and Natalie, arrived at the police station. Walter was processed as a minor in need of supervision and placed with his sister and their attorney at the latter's residence. Mr. Polovchak was told of the court date the following

morning and advised that he and his wife would be transported to the hearing by the police.

A petition for adjudication of wardship was subsequently filed by a police officer, alleging that Walter Polovchak, age 12, was "beyond the control of parents in that he did on/or about July 14, 1980 at 9:00 A.M. at Cook County, Illinois, absent himself from his home without the expressed consent of his parents, in violation of Chapter 37, Section 702—3a, Illinois Revised Statutes, 1979," and that it was in the best interests of the minor and the public that Walter be adjudged a ward of the court.

On July 19, Walter appeared in court with the retained attorney. Also present were an assistant State's Attorney, counsel for the subsequently appointed guardian *ad litem*, a representative of DCFS, a representative of the Immigration and Naturalization Service of the United States, several police officers, and the Polovchaks. The trial judge asked whether Walter was prepared to plead to the charge, and, after an off-the-record conference between the assistant State's Attorney and counsel for the guardian *ad litem*, the latter entered a denial on behalf of Walter. She also informed the court that she and the assistant State's Attorney had agreed to the appointment of a temporary custodian. The assistant State's Attorney advised the court that it was her understanding that the parents were not in agreement with the temporary custody arrangement.

The Polovchaks neither spoke nor understood English, they did not have an attorney, nor were they provided with counsel or a court-appointed interpreter. Walter's private attorney, who speaks Ukrainian, advised the court that there were Ukrainian-speaking people in the courtroom, and a woman, whose status is not disclosed by the record, volunteered to interpret for the parents. Through the interpreter, the trial judge ascertained that Walter had been away from home since July 14, and that the parents wanted to take him home with them. The

court informed the Polovchaks that Walter would be placed in the temporary custody of DCFS pending a social investigation by a probation officer and a full hearing to determine whether Walter was a minor in need of supervision and whether he would be removed or returned to the custody of his parents. The parents were also advised that they had the right to be represented by counsel and that they should return to court with their attorney on July 30. No evidence was taken at this hearing; despite the parents' opposition, an order said to be "by agreement" was entered appointing the Guardianship Administrator of DCFS temporary custodian. In addition, the following findings of fact were entered on a preprinted form: that probable cause existed to believe that Walter was a minor otherwise in need of supervision, and that Walter should be placed in custody, in a suitable place, pending a further hearing because it was a matter of immediate and urgent necessity for his protection, he had been away from home for five days, he had in open court stated that he would not remain with his parents if released, and on his own motion he requested the court to order protective detention.

A petition was subsequently filed seeking to have Natalie Polovchak adjudged a ward of the court. The allegations of this petition were virtually identical to those contained in the previous petition on behalf of her brother. The hearing that followed on both petitions extended over a two-day period. All parties were represented by counsel, and several interpreters were present.

At the outset of the July 30 adjudicatory hearing, the trial court denied a motion by counsel for the Polovchaks to vacate the temporary custody order of July 19 on the grounds that it was not in compliance with the Juvenile Court Act. Over the objection of opposing counsel, the attorneys for Natalie and Walter then entered admissions on behalf of their clients "to the charges that they [were] minors in need of supervision." All four mem-

bers of the Polovchak family, including Walter, subsequently testified through an interpreter. The court also heard testimony from cousin Walter, Sergeant Rojek, and two psychiatrists. The evidence indicated that Walter left his parents' home without their consent and stayed with his sister and cousin for the next few days in the cousin's apartment and that he was motivated in doing so by his desire to stay in this country rather than return to the Ukraine. While both Natalie and cousin Walter denied that either influenced Walter's decision, it is clear that Walter's cousin had told Walter that he would help him if Walter decided not to go back to the Ukraine with his parents; it is also undisputed that Natalie, cousin Walter and his two adult friends assisted him in removing his belongings from his parents' home. Walter testified that had his sister and cousin not assisted him or allowed him to stay with them, he would have still left his parents' apartment and gone somewhere else.

Both the State and the Polovchaks presented psychiatric testimony. The two psychiatrists, Dr. Ner Littner and Dr. Robert Bussell, neither of whom examined Walter, testified in response to hypothetical questions which essentially incorporated the salient facts of this case. Neither expert believed that Walter was beyond the control of his parents. In addition, Dr. Littner, the Polovchaks' witness, stated his opinion that Walter's behavior was an immature act of defiance and rebellion rather than an independent judgment, and that the assistance of Walter's sister and cousin provided his actions with an aura of respectability or gave Walter a rationalization for rebelling against his parents. Further he stated that Walter was not a runaway nor did he engage in the type of behavior common to a runaway, who would ordinarily be certain not to let his parents know where he was going. Dr. Littner believed that, had Walter not been assisted by his cousin and sister, he may have manifested his disagreement with his parents by locking himself into a room and refusing to come out. The psychiatrists disagreed on whether a 12-year-old boy had

the ability to make an independent judgment as to which country he preferred to live in; their opinions also differed on the extent of emotional harm that would result to Walter from a continued separation from his parents.

At the conclusion of the hearing on August 4, 1980, the trial court found both Natalie and Walter to be minors in need of supervision and also adjudicated them wards of the court. Thereafter, during a discussion of possible temporary dispositions, including Walter's return to his parents, the judge was told by the DCFS worker that Walter had threatened suicide if returned "home." The worker indicated she would have so testified under oath, but the trial court denied a request that she be sworn. While the State attempts to rely on the alleged suicidal threats, we believe the references thereto are too nebulous for that purpose. There had been no reference to such threats in the initial appearance before the court or during the adjudicatory hearing. The later reference was neither under oath nor subject to cross-examination, and Walter neither testified, nor was he asked, about the matter. It is not entirely clear whether "home" was understood by Walter as the apartment of his parents or the Ukraine. Finally, the court had already announced its decision before the worker, who apparently neither spoke nor understood Ukrainian, volunteered the information.

On November 5, the date scheduled for the dispositional hearing, the Polovchaks filed notices of appeal from the wardship adjudications and the temporary custody orders. Natalie is no longer a minor under our juvenile act, and she is not involved in this appeal.

The United States Attorney for the Northern District of Illinois, at the direction of the Attorney General of the United States, has filed a "suggestion of interest" in this court advising us that, on July 19, 1980, the district director of the Immigration and Naturalization Service, with the advice of the Department of State, granted Walter Polovchak's petition for asylum. Walter's status was subsequently changed to permanent resident alien. We are in-

formed that the Immigration and Naturalization Service has also entered a departure control order which prohibits the departure of Walter from the United States. While advising us that the United States has no direct interest in the legal issues presented concerning our State statute, the United States Attorney suggests that any decision regarding the final custody of Walter respect the supremacy of the obligations of the United States under the Refugee Act of 1980 (94 Stat. 109, 8 U.S.C. 1182 (1980)) and the international obligations of the United States under the United Nations Protocol Relating to the Status of Refugees. 19 U.S.T. 6224-29 (1968).

Both the State and Walter argue that the parents should have been estopped from taking an interlocutory appeal under our Rule 662. The appellate court denied the State's motion to dismiss the appeal on that ground, a decision with which we agree. It is unnecessary to lengthen this opinion by quoting or discussing the portions of the record which demonstrate that the charges that the appeal was "fraudulently" based, that the parents "deceived" the trial court or adopted dilatory tactics for the purpose of taking an appeal are unfounded. Suffice it to say that the delay between the date of the wardship adjudication and the dated scheduled for the dispositional hearing resulted from a number of factors, some of which were directly attributable to the State and the minors. Too, we do not doubt that the multiple litigation and controversy surrounding this case have also adversely affected what should otherwise have been a prompt determination regarding Walter's custody. In fact, on the date scheduled for the dispositional hearing, he had been removed from the custody of his parents for 3½ months. Under the circumstances of this case, where the parents, but not the minor, were contesting the adjudication of wardship and the determination that their son was a minor in need of supervision, and an order of disposition had not been entered within 90 days of the adjudication of wardship, we hold that the parents properly invoked our Rule 662 to appeal (73 Ill. 2d R. 622).

The stated purpose of our Juvenile Court Act "is to secure for each minor subject hereto such care and guidance, *preferably in his own home,* as will serve the moral, emotional, mental, and physical welfare of the minor and the best interests of the community; *to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal* ***." (Emphasis added.) (Ill. Rev. Stat. 1979, ch. 37, par. 701-2(1); *People ex rel. Davis* v. *Vasquez* (1982), 92 Ill. 2d 132, 142-43.) Just as the Act severely limits the authority to hold a minor in custody (*People* v. *Woodruff* (1981), 88 Ill. 2d 10, 14), it quite clearly directs the court before whom the minor is brought to release the minor to the custody of his parents rather than prescribe detention or shelter care unless it is found that it "is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another, that he is likely to flee the jurisdiction of the court or that the minor was taken into custody under a warrant." Ill. Rev. Stat. 1979, ch. 37, pars. 703-4, 703-6.

While the original order removing Walter from the custody of his parents includes a finding that the order was a matter of immediate and urgent necessity for Walter's protection, evidence in the record simply does not support that finding. None of the witnesses present, the minor, the parents or anyone else able to give relevant testimony was examined. (Ill. Rev. Stat. 1979, ch. 37, pars. 703-6.) Nor did Walter state, as the findings would seem to indicate, that he would not remain with his parents if released. Indeed, it is clear from the later proceedings that Walter's obstinance stemmed not from his opposition to being reunited with his parents but rather from his desire not to return to the Ukraine, an unlikely possibility, had the court released him to his parents, in view of the interest manifested by the Federal agencies. The factual allegation in the petition was that Walter had been away from home for five days without the expressed consent of his parents. Whether the court was aware, at the initial hearing, of the

circumstances under which Walter left his parents' home or that he had been staying with his cousin and older sister, rather than at large in the city of Chicago, is also unclear since no one specifically advised the court; at least on the record, of these facts. It is, in our opinion, clear that, given the absence of evidence to support the finding required by statute, Walter should have been released to the custody of his parents, who were in the courtroom requesting permission to take their son home.

The statutory provision under which Walter was later adjudicated a minor in need of supervision then provided: "Those otherwise in need of supervision include (a) any minor under 18 years of age who is beyond the control of his parents, guardian or other custodian." (Ill. Rev. Stat. 1979, ch. 37, par. 702-3(a); the statute has since been amended by Public Act 82-969 (Minor Requiring Authoritative Intervention), approved Sept. 8, 1982, eff. Jan. 1, 1983). The Act requires that an adjudicatory hearing be held to determine whether the allegations of the petition are supported by a preponderance of the evidence. (Ill. Rev. Stat. 1979, ch. 37, par. 701-4.) The decision of the trial court at that hearing should not be disturbed on appeal unless it is against the manifest weight of the evidence. See *In re Brown* (1981), 86 Ill. 2d 147, 152; *In re Stilley* (1977), 66 Ill. 2d 515, 520.

While this court has not previously construed the phrase "beyond the control" of one's parents, and the legislature has not further defined or explained that term in the Act, we agree with the appellate court that it seems manifest that the legislature could not have intended that phrase to include an isolated act by a 12-year-old minor which poses no hazard to him or anyone else. Decisions in this court, while involving different issues, demonstrate that the initial determination that the minor was in need of supervision was predicated on the fact that he was incorrigible, a frequent runaway or his acts posed serious hazards to himself or others. (See *In re R.R.* (1982), 92 Ill. 2d 423 (minor tried to poison her mother and was beyond her

parents' control); *In re Baker* (1978), 71 Ill. 2d 480 (minor repeatedly ran away from home); *In re Sekeres* (1971), 48 Ill. 2d 431, *appeal dismissed* (1972), 404 U.S. 1008, 30 L. Ed. 2d 656, 92 S. Ct. 691 (minor frequently absented herself from home); *In re Presley* (1970), 47 Ill. 2d 50 (allegations in original petition seeking to adjudicate minor otherwise in need of supervision or neglected were that she had absented herself from home for long periods of time without parental consent and on a specific date was forced by her mother and stepfather to leave home); *cf. In re G.B.* (1981), 88 Ill. 2d 36, *cert denied* (1982.) ..... U.S. ....., 72 L. Ed. 2d 487, 102 S. Ct. 2041 (habitually truant minor); Ill. Rev. Stat. 1979, ch. 37, par. 702-3(b)); Pub. Act 82-969 (minor requiring authoritative intervention), eff. Jan. 1, 1983; see also *In re Snyder* (1975), 85 Wash. 2d 182, 532 P.2d 278 (evidence that minor was adamant about refusing to return home, had established a pattern of refusing to obey her parents, and, on two occasions, in effect, fled her home, was sufficient to support the finding of loss of parental power and control); *In re D.J.B.* (1971), 18 Cal. App. 3d 782, 96 Cal. Rptr. 146 (a finding that a minor is beyond the control of his parents may be predicated on a single act if sufficiently serious; evidence that minor left home without parental consent was not of such a nature as to be indicative of the loss of parental control); *In re Galvan* (La. App. 1980), 384 So. 2d 1000 (evidence that on two occasions minor left the home of his mother—the custodial parent—without consent and stayed with his father because his mother was planning to move the family to Texas or because he may have thought he would be sent to military school was insufficient to establish that the minor was habitually disobedient and was ungovernable by his mother or that he was a runaway child in need of supervision); *cf. In re Price* (N.Y. Fam. Ct. 1978), 94 Misc. 2d 345, 404 N.Y.S.2d 821.

Although the parties characterize the evidence differently and disagree as to its legal sufficiency, as the appellate court noted, no material facts were in dispute. With

the help of his sister and cousin, Walter, a 12-year-old boy, left his parents' home without their consent and spent the next few days with his older sister at his cousin's apartment. This occurred during a time of considerable family tension regarding the Polovchaks' decision to return to their homeland. Neither psychiatrist, testifying in response to hypothetical questions based on these and other relevant facts, believed that Walter was beyond the control of his parents. We believe the appellate court correctly concluded that the trial court's decision was against the manifest weight of the evidence. Walter's actions, which can hardly be characterized as those of a runaway, and posed no hazard to him or anyone else, simply do not establish that he was beyond parental control.

The State argues, alternatively, that this court should remand for another hearing because Walter was not given the opportunity to present evidence that he was in need of supervision. Because the court indicated that it was going to conduct a hearing to determine whether there was a factual basis for the earlier admission entered by Walter, the State argues that Walter was limited in presenting evidence. Too, the State complains that, believing that there need only have been evidence to establish a factual basis for the admission, it may have been misled concerning the amount of evidence it was required to produce, and should therefore have another opportunity. We cannot agree. The record shows that neither the State nor Walter was prevented from presenting any evidence relevant to the determination of whether Walter was beyond his parents' control. A full adjudicatory hearing was held; Michael, Anna, Natalie and Walter Polovchak, cousin Walter and several other witnesses testified; each witness was fully examined by all parties; and, as the appellate court stated, the record establishes that the State recognized its burden and proceeded accordingly.

We have been advised that Michael and Anna Polovchak have returned to the Ukraine. It is apparent, therefore, that Walter cannot immediately be returned to his parents,

even assuming the Federal orders prohibiting his departure from this country had not been entered. We, of course, have considered only the issues before us, and our holding that the evidence before the circuit court did not support its action is dispositive only of those proceedings. Considering that, so far as we are presently informed, Federal litigation regarding the asylum and departure orders is still pending in the United States courts, we believe the appropriate disposition of this case is to remand it to the circuit court of Cook County with directions that it retain jurisdiction of Walter and this cause pending the return of Walter's parents, or either of them, to this country, in which event Walter's custody shall be given to the returning parents or parent. In the event that neither Michael nor Anna Polovchak shall return, the circuit court shall proceed in the manner it deems best suited to Walter's needs.

In view of our disposition here, we need reach neither the constitutional challenges nor the issue of whether the adjudication of wardship was in the best interests of Walter or the public.

For the reasons stated the appellate court's judgment reversing the circuit court is affirmed, and the cause is remanded to the circuit court of Cook County with directions to proceed in accordance herewith.

Affirmed and remanded,
with directions.

APPENDIX B

ORDER OF THE ILLINOIS SUPREME COURT DENYING THE PETITION FOR REHEARING

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

September 30, 1983

Hon. Richard M. Daley
Cook County State's Attorney
Criminal Appeals Section, Rm. 574
Richard J. Daley Center
Chicago, IL 60602

Nos. 56552 — In the Interest of Walter Polovchak, a Minor
56572 (People State of Illinois, et al., appellants,
Cons. vs. Anna Polovchak, et al., appellees).
Appeal, Appellate Court, First District.

The Supreme Court today *DENIED* the petition for rehearing in the above entitled cause.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

Office - Supreme Court, U.S.
FILED
JAN 31 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-5951

In the

Supreme Court of the United States

OCTOBER TERM, 1983

IN RE WALTER POLOVCHAK

(STATE OF ILLINOIS,

Petitioner,

vs.

MICHAEL POLOVCHAK and ANNA POLOVCHAK,
Respondents.)

CONSOLIDATED ANSWER TO PETITIONS FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 83-5951

IN RE WALTER POLOVCHAK

(STATE OF ILLINOIS,

Petitioner,

vs.

MICHAEL POLOVCHAK and ANNA POLOVCHAK,

Respondents.)

CONSOLIDATED ANSWER TO PETITIONS FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The facts of this case are well stated in the opinion of the Illinois Supreme Court, 97 Ill.2d 212 (1983), a copy of which is annexed to Illinois' Petition for Certiorari as Appendix "A." Stated briefly, on July 14, 1980, twelve year old Walter Polovchak left his parents' home without permission as the result of a family quarrel over whether the Polovchaks should return to their homeland in the Ukraine. R. 103. He stayed with his adult cousin and sister for five days, and was never without shelter or care. R. 118. Based on these facts

he was adjudicated a ward of the Cook County Juvenile Court on August 4, 1980. R. 5. The court found that Walter was a Minor in Need of Supervision (MINS), in that he was "beyond the control" of his parents. R. 326. The Illinois Appellate Court subsequently reversed this finding. 104 Ill. App.3d 203 (1981). The Illinois Supreme Court affirmed the reversal, adding an instruction that the trial court retain jurisdiction over Walter until his parents could resume custody. 97 Ill.2d 212, 227 (1983).

The statements of the case presented in the Petitions for Certiorari contain a number of inaccuracies. To the extent that these inaccuracies are relevant to the disposition of this matter, they will be referred to and corrected in the text or in footnotes, *infra*.

SUMMARY OF ARGUMENT

The Petitions for Certiorari should be denied because they present no substantial federal question. The relief ordered by the Illinois Supreme Court was within the power of that court and did not deny either petitioner due process of law.

ARGUMENT

I. ILLINOIS' PETITION FOR A WRIT OF CERTIORARI SHOULD NOT BE GRANTED.

A. The Illinois Supreme Court's Remand Order Did Not Violate The Due Process Clause.

Walter Polovchak was removed from the custody of his parents on July 19, 1980, and placed in the custody of the Illinois Department of Children and Family Services (DCFS). R. 5. The Polovchak parents were unrepresented at this hearing, and the court heard no testimony before taking the child from his parents. R. 40-52; 97 Ill.2d 212, 218 (1983). This order was continued following the trial court's adjudication of wardship, and remained in effect for almost three years until the case came before the Illinois Supreme Court. 97 Ill.2d at 215. For this entire period, and at every stage of the proceedings, both the State of Illinois and Walter himself argued in favor of keeping Walter in the custody of DCFS and under the wardship of the Juvenile Court. See, e.g., R. 300, 309, 315. See also, Minor's Brief, Illinois Appellate Court at 59, 80-2857; State's Brief, Illinois Appellate Court at 48, 80-2857; Minor's Brief, Illinois Supreme Court at 69-70, No. 26552; State's Brief, Illinois Supreme Court at 37, No. 26552.

The Illinois Supreme Court, however, ruled unanimously that Walter's conduct did not fall within the scope of the Juvenile Court Act:

> It is, in our opinion, clear that, given the absence of evidence to support the finding required by

> statute, Walter should have been returned to the custody of his parents, who were in the courtroom requesting permission to take their son home. 97 Ill. 2d at 224.

The Illinois court affirmed the Appellate Court's reversal of the adjudication of wardship. 97 Ill.2d at 228. Noting that Michael and Anna Polovchak had returned to their homeland during the pendency of the case, the court fashioned its order so as to avoid turning Walter onto the street without a custodian to provide for his shelter and support. The court stated:

> We have been advised that Michael and Anna Polovchak have returned to the Ukraine. It is apparent, therefore, that Walter cannot immediately be returned to his parents, even assuming the Federal orders prohibiting his departure from this country had not been entered. We, of course, have considered only the issues before us, and our holding that the evidence before the circuit court did not support its action is dispositive only of those proceedings. Considering that, as far as we are presently informed, Federal litigation regarding the asylum and departure orders is still pending in the United States courts, we believe the appropriate disposition of this case is to remand it to the circuit court of Cook County with directions that it retain jurisdiction of Walter and this cause pending the return of Walter's parents, or either of them, to this country, in which event Walter's custody shall be given to the returning parents or parent. In the event that neither Michael nor Anna Polovchak shall return, the circuit court shall proceed in the manner it deems best suited to Walter's needs. 97 Ill.2d at 227.

Illinois' objection to this order is without merit for the following reasons: (1) the order does not offend

the Due Process Clause; (2) the issue raised by Illinois is not ripe for adjudication; (3) the state lacks standing to raise this issue; and (4) both Illinois and Walter have waived any objection to a brief continuation of wardship.

1. Due Process

The Illinois court's order was obviously entered pursuant to Illinois Supreme Court Rule 366, which allows a reviewing court to "grant any relief . . . that the case may require." Ill. Rev. Stat. ch. 110A § 366(a)(5). In this case the Court's ultimate ruling was to return custody of Walter to his parents. Since the parents were not in a position immediately to reassume custody, the case required that the transfer from DCFS to Anna and Michael be delayed until one of the parents could return to the United States. Thus, the order was in no sense a new adjudication which denied Walter due process of the law, but rather a delay of the effect of the Court's ruling in order to allow the parties to reassume the status quo ante.[1]

This action may be seen as the Illinois analogue to the principle followed by the Federal Courts that a court of review has power not only to correct errors in the judgment entered by the trial court, but also to

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[1] Furthermore, the Illinois judiciary has long exercised an inherent plenary jurisdiction to appoint guardians for minors who come before the courts. *In re Smyth*, 65 Ill. App.2d 431, 441 (1965); *In re Arnold*, 144 Ill. App.2d 348, 400 (1969). In this case, the Illinois Supreme Court's exercise of this power was reasoned and limited. The equitable continuation of guardianship was clearly circumscribed, and it provided for further judicial proceedings should neither parent return.

consider any changes which have supervened since the original judgment and to make such disposition of the case as justice currently requires.[2] See, e.g., *McLeod* v. *General Electric Co.*, 385 U.S. 533, 535 (1967); *Ithaca College* v. *NLRB*, 623 F.2d 224, 229 (2nd Cir. 1980), *cert. den.*, 449 U.S. 975 (1981); *Pendergrast* v. *United States*, 416 F.2d 776, 781 (D.C. Cir. 1967); *Brownell* v. *Kaufman*, 251 F.2d 374, 375 (D.C. Cir. 1957). Furthermore, a reviewing court may delay the effect of its ruling in order to allow for adjustment to the new situation which will follow from the ruling. This Court recently did just that when it twice stayed the effective date of its decision to hold unconstitutional certain provisions of the Bankruptcy Reform Act of 1978, in order to give Congress time to remedy the statute's deficiencies. *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50; ——— U.S. ———, 103 S. Ct. 199 (1982).

2. Ripeness

The State of Illinois complains of the Illinois Supreme Court ruling that it places Walter under the control of the Juvenile Court for an indefinite period of time, "possibly until he becomes an adult." Illinois' Pet. at 2,

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[2] Ironically, the decision of the Illinois Appellate Court provided the very relief, outright reversal, which Illinois is now attempting to obtain via review by this Court. 104 Ill.App.3d at 211. The state, however, chose to open up the case by appealing that decision to the Illinois Supreme Court, thus subjecting itself to that Court's power "to direct such 'appropriate' order as it thought just under the circumstances." *Forman* v. *United States*, 361 U.S. 416, 426 (1960) (petitioner's appeal "opened up the case" for appropriate order by Appellate Court).

7, 8. This is not accurate. The Illinois Supreme Court directed the trial court to retain jurisdiction over Walter until he could be returned to one of his parents, and, should that not be possible, to "proceed in the manner it deems best suited to Walter's needs." Since Illinois requested and received a stay of the mandate, this procedure has never been initiated. Consequently, the State's parade of horribles, such as disposition without a hearing or without participation by the child's counsel, remains pure speculation.[3] *Hall* v. *Beals*, 396 U.S. 45, 49 (1969) (speculative contingencies afford no basis for passing on substantive issues); accord, *DeFunis* v. *Odegaard*, 416 U.S. 312, 320 fn. 5 (1974).

Needless to say, any action taken by the trial court on remand which is objectionable to the child or the state would be subject to direct appeal in the Illinois Courts. Ill. Rev. Stat. ch. 110A §§ 303, 662. There can, however, be no review based upon what the trial court might do. 28 U.S.C. § 1257. See also, *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1948) (no appeal from decision which is tentative or incomplete); *United States* v. *Associated Air Transport, Inc.*, 256 F.2d 857, 861 (5 Cir. 1958) (no appeal from conditional order which depends on contingencies).

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[3] It should be obvious that the direction to the trial court to proceed in the manner best suited to Walter's needs calls for a judicial hearing accompanied by due process safeguards. When this Court remands a case with "directions to proceed in a manner not inconsistent with the Court's opinion" it is understood by all parties that the Due Process Clause obtains to the further proceedings as they are conducted by the court below.

3. Standing

Illinois premises its entire argument concerning the propriety of the remand order on the asserted violation of Walter's due process rights. Since Walter is separately represented in this matter, indeed he was named as the respondent in the state's original juvenile petition, it is apparent that Illinois lacks standing to assert the alleged violation of his rights. *Broadrick* v. *Oklahoma,* 413 U.S. 601, 612 (1973). While the State may have a *parens patriae* duty or power to protect its minor citizens, this does not confer standing upon the Attorney General to assert every conceivable issue on behalf of every child who finds himself in litigation. This is particularly the case where the State is the party which initiated the lawsuit; to rule otherwise would be to allow the State to confer standing upon itself. *Pennsylvania ex rel. Rafferty* v. *Philadelphia Psychiatric Center,* 356 F. Supp. 500, 505 (E.D. Pa. 1973) (state may not sue as *parens patriae* unless substantial number of inhabitants are injured and state has separate and distinct injury); *Pennsylvania* v. *Kleppe,* 533 F.2d 668, 675 (D.C. Cir. 1976), *cert. den. sub nom., Pennsylvania* v. *Kobelinski,* 429 U.S. 977 (1976) (state has no standing to sue on behalf of individual or even narrow class of individuals); See, also, *Pennsylvania* v. *New Jersey,* 426 U.S. 660 (1976) (state may not litigate personal claims of its citizens).

The cases cited by Illinois to bolster its standing do not support that proposition. *Kent* v. *United States,* 383 U.S. 541, 554-55 (1965), does note that a state may stand in *parens patriae* to a child, but goes on to say that this is not an excuse for procedural irregularity; the case does not discuss standing at all. The Illinois

Supreme Court, however, has held that the function of the State's Attorney under the Illinois Juvenile Court Act is to represent the People, that is to say, *not* the child. *In re Jennings*, 68 Ill. 2d 125, 135 (1977); Ill. Rev. Stat. ch. 37, § 701-21.

As if to recognize its own lack of standing, Illinois concluded its standing section with the apologia that, in any event, Walter would file his own Petition for Certiorari. Ill. Pet. at 14. It is true that Walter has standing to raise the instant issue. The fact, however, is that he has sought Certiorari on wholly separate grounds. Minor's Pet. at 3. Save for an oblique reference in one footnote to the effect that he "supports" the state's Petition, Walter has not requested that this Court review the Illinois Supreme Court's remand order. Minor's Pet. at 9 fn. 2.

4. Waiver

Both Illinois and Walter himself consistently have argued that Walter should be a ward of the Juvenile Court. The State initiated a lawsuit seeking this relief; Walter specifically acceded to that petition and waived his right to contest wardship. R. 5, 9, 81-85. Indeed, Walter's Petition for Certiorari seeks a full remand and a new trial in order to establish his asserted "right" to be a ward of the Juvenile Court. Under these circumstances, both the State and Walter have waived any objection to a temporary and equitable continuation of the Juvenile Court's jurisdiction over the child. *Southern Pacific Co.* v. *Brotherhood of Locomotive Firemen*, 393 F.2d 345, 348 (D.C. Cir. 1967), *cert. den.* 391 U.S. 913 (1968) (railroads which had invoked court's jurisdiction to obtain injunction would not be heard to con-

test court's authority to impose condition on injunction). In short, Illinois has for the last 3½ years argued for extraordinary and extensive judicial intrusion into the life of the Polovchak family; the state is now in no position to argue against the Court's limited exercise of equitable power so as to return the parties to their original positions.

B. Certiorari Should Not be Used As a Device for Delay or Manipulation of the Judicial System.

Illinois' second argument is that this Court should grant Certiorari "in order to prevent the forcible and illegal removal of Walter Polovchak from the United States." Ill. Pet. at 15. This argument is made absolutely without legal or factual support. It can only be seen as an abuse of the Petition for Certiorari.

That the question of Walter's removal from the United States is not at issue in this litigation has been recognized by every Illinois court which has reviewed this case. 104 Ill. App.3d 203, 210 (1981); 97 Ill.2d 212, 227 (1983). Furthermore, the precise question of Walter's immigration status is now pending before the United States District Court for the Northern District of Illinois.[4]

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[4] *Polovchak* v. *Smith*, filed by Anna and Michael against the Attorney General and others, seeks a determination as to whether the grant of asylum to then 12-year old Walter was lawful, in that the parents received no notice or opportunity to participate in the proceeding. It also challenges the Administration's position that the grant of asylum prevents the parents from returning their child to their homeland, now that the Illinois courts have restored their full parental rights.

The Minor has filed a lawsuit, *Polovchak* v. *Polovchak*, 82 C 2327, which seeks a declaration that the grant of asylum absolutely prevents his removal from the United

Polovchak v. *Smith*, No. 80 C 5595. The State of Illinois has no interest in the federal question of the nature and consequence of Walter's status under the Immigration and Nationality Act. *Takahashi* v. *Fish and Game Commission*, 334 U.S. 410 (1948). *Plyler* v. *Doe*, 457 U.S. 202, 225 (1982) (classification on basis of alienage not a basis for state's interests).

The suggestion that Walter's parents intend to remove him from the United States in violation of the law is unsupportable and is completely at odds with the record in this case. Anna and Michael Polovchak have been subjected to the loss of custody of their child for over three years, notwithstanding the fact that the trial court's initial removal of their child was in violation of the Illinois Juvenile Court Act. 97 Ill.2d at 224, 226. Throughout this entire ordeal they have respected and obeyed the law; the state can point to no fact which indicates otherwise. It is manifestly unsupportable to suggest now that they intend to determine their child's future by force and not by law. Ill. Pet. at 16.

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[4] (Continued)

States. That suit was dismissed for lack of personal service and is now pending before the Seventh Circuit. No. 83-1118. Additionally, the minor has presented the same issues as a counterclaim in *Polovchak* v. *Smith*.

Finally, certain relatives have initiated two lawsuits in the Circuit Court of Cook County. Walter's aunt and uncle filed and voluntarily dismissed an adoption action, seeking to terminate the Polovchaks' parental rights and to adopt Walter as their son. *In the Matter of the Petition of John Junko and Anastasia Junko, Husband and Wife, to Adopt Walter Polovchak, a Minor*, No. 81 CoA 1956. Walter's cousin has also filed a lawuit seeking custody of the minor for himself. *In re Custody of Walter Polovchak*, No. 82 D 7175, which is presently pending.

The hollowness of Illinois' position is made apparent by the fact that it neither requests nor suggests what actual relief it seeks, should Certiorari be granted pursuant to its second argument. The fact must be that the state is not seeking relief on the merits, but only delay.[5] This Court should not allow its jurisdiction to be so misused.

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[5] Indeed, the first paragraph of Illinois' Statement Of The Case reveals that the instant petition is brought for purposes which would misuse the jurisdiction of this court. The statement begins:

> Walter Polovchak is a sixteen year old boy who wants to remain in the United States. His parents want him to be forcibly deported to the Soviet Union. The State of Illinois has been cooperating with Walter and his attorneys in the Illinois courts in an effort to keep him from being forcibly deported. Ill. Pet. at 2.

Thus, the State of Illinois has admitted, for the first time in the history of this litigation, that its underlying purpose is not to enforce the provisions of the Illinois Juvenile Court Act, but rather to prevent Anna and Michael Polovchak from exercising their choice of residency with their family. Viewed in this light, the arguments proffered by Illinois in support of Certiorari can only be seen as another attempt to prolong this litigation as an end in and of itself.

In any event, Illinois' Statement of the Case is factually inaccurate. This case presents no issue of deportation, forcible or otherwise. The sole issue in the state court litigation was the correctness of adjudicating Walter a ward of the Illinois Juvenile Court. *In re Polovchak,* 97 Ill.2d 212 (1983).

II. WALTER POLOVCHAK'S PETITION FOR A WRIT OF CERTIORARI SHOULD NOT BE GRANTED SINCE THE ILLINOIS SUPREME COURT DID NOT ERR IN REVERSING THIS CASE WITHOUT REMAND FOR A NEW TRIAL.

The sole argument raised in the minor's Petition for Certiorari is that the Illinois Supreme Court erred by reversing the case outright, rather than remanding it for a new trial. Since the reversal was based upon the inadequacy of the evidence, however, reversal is entirely appropriate and a new trial is not necessary.

Initially, it must be noted that the minor's argument is based upon the fallacious premise that he may seek Certiorari based upon language found in the opinion of the intermediate appellate court. Minor's Pet. at 5-7. For the purpose of Certiorari, however, that opinion has been superceded by the ruling of the Illinois Supreme Court. 28 USC § 1257; *Beilan* v. *Board of Education of Philadelphia*, 357 U.S. 399, 402 n. 3 (1958); *Wolfe* v. *North Carolina*, 364 U.S. 177, 194-95 (1960). Thus, the minor's petition is wide of the mark in complaining that the Appellate Court attached "two brand new provisos" to the Illinois Juvenile Court Act.[6] Minor's Pet. at 5. The operative opinion is that of the Illinois Supreme Court, which makes it clear that the reason for the reversal was that the minor's conduct did not fall within the ambit of the Juvenile Court Act. 97 Ill.2d at 226.

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[6] The Minor's Petition was also inaccurate in stating that no party requested that the Appellate Court construe the term "beyond control," Minor's Pet. at 5. The parents briefed this issue fully in the Illinois Appellate Court. Parents' Brief, Illinois Appellate Court at 31-39, No. 80-2857.

The Illinois Supreme Court held:

> Although the parties characterize the evidence differently and disagree as to its legal sufficiency, as the appellate court noted, no material facts were in dispute. With the help of his sister and cousin, Walter, a 12-year-old boy, left his parents' home without their consent and spent the next few days with his older sister at his cousin's apartment. This occurred during a time of considerable family tension regarding the Polovchaks' decision to return to their homeland. Neither psychiatrist, testifying in response to hypothetical questions based on these and other relevant facts, believed that Walter was beyond the control of his parents. We believe the appellate court correctly concluded that the trial court's decision was against the manifest weight of the evidence. Walter's actions, which can hardly be characterized as those of a runaway, and posed no hazard to him or anyone else, simply do not establish that he was beyond parental control. 97 Ill.2d at 226.

The offending provisos upon which the minor's petition is based simply do not appear in the relevant opinion.

It is well settled law that a reviewing court may order an outright reversal based upon the legal insufficiency of the evidence, particularly where the facts are undisputed, without ordering remand for a new trial. In *Rowoldt* v. *Perfetto,* 355 U.S. 115 (1957), for example, this Court reviewed the evidence which supported an order of deportation against the defendant for having been a member of the Communist Party. Applying the standard of "meaningful association" to the undisputed facts in the record, this Court concluded that the evidence was "too insubstantial to support the order of deportation." The Court reversed without remand. 355 U.S. at 121. More

recently, this Court in *Fedorenko* v. *United States,* 449 U.S. 490 (1981), affirmed a reversal without new trial which had been entered by the Fifth Circuit. In *Fedorenko* the District Court initially ruled against the government's petition to denaturalize the defendant, based upon an interpretation of the Immigration and Nationality Act of 1952. 455 F.Supp. 893, 921 (S.D. Fla. 1978). On appeal, the Fifth Circuit, having arrived at a contrary interpretation of the Immigration and Nationality Act and having reviewed the facts in the trial court record, reversed without remand for a new trial and ordered that the District Court enter judgment denaturalizing the defendant. 597 F.2d 946, 954 (5th Cir. 1979). This Court affirmed the Fifth Circuit, revoking Fedorenko's citizenship without a second trial. 449 U.S. at 518. See also, *Girouard* v. *United States,* 328 U.S. 61 (1946).

The minor's reliance on *Saunders* v. *Shaw,* 244 U.S. 317 (1917), is misplaced since that case involved a party who had been denied the opportunity to present evidence. 244 U.S. at 319. In the instant case, as the Illinois Supreme Court noted, "[t]he record shows that neither the state nor Walter was prevented from presenting any evidence relevant to the determination of whether Walter was beyond his parents' control." 97 Ill.2d at 227. The minor's Petition for Certiorari does not point to a single instance where he attempted to offer evidence to the trial court and was refused.

Finally, the minor's argument that the Illinois Supreme Court imposed a new standard, while he relied on "the old standard," is entirely without merit. Minor's Pet. at 7. Prior to this case there was no appellate decision in Illinois which construed the phrase "beyond the control" of one's parents. 97 Ill.2d at 244. Thus, there was

no "old standard" upon which the minor could have relied. There were, however, numerous cases in Illinois and other jurisdictions which held that a single act of non-serious misbehavior could not form the basis of a juvenile adjudication. See, e.g., *In re R.R.*, 92 Ill.2d 423 (1982); *In re Baker* 71 Ill.2d 480 (1978); *In re Sekeres* 48 Ill.2d 431 (1971), appeal dismissed 404 U.S. 1008 (1972); *In re Presley* 47 Ill.2d 50 (1970); Cf. *In re G.B.* 88 Ill.2d 36 (1981), *cert denied*, 456 U.S. 963 (1982); Ill. Rev. Stat. 1979, ch. 37, par. 702-3(b)); Pub. Act 82-969 (minor requiring authoritative intervention), eff. Jan. 1, 1983. See also, *In re Snyder* 85 Wash. 2d 182 (1975); *In re D.J.B.* 18 Cal. App.3d 782 (1971); *In re Galvan* (La. App.), 384 So. 2d 1000 (1980). The Illinois Supreme Court relied upon these opinions in deciding this case. 97 Ill.2d at 225-26.

Walter's attorneys were on notice from the outset of this litigation that the construction of the MINS statute was at issue. *Bouie* v. *Columbia*, 378 U.S. 673 (1930); *Brankerhoff-Faris Transit Co. & Savings Co.* v. *Hill*, 281 U.S. 673 (1930). They had every opportunity to present whatever proof they possessed. If they deliberately chose to hold back some of their evidence it was done for tactical purposes, and their intentional litigation strategy cannot now form the basis for a grant of Certiorari.

III. THIS CASE PRESENTS NO ISSUE OF GENERAL IMPORTANCE.

The central issue on the merits in this case is the construction of the Illinois "Minor In Need Of Supervision" statute as it existed in 1980. That statute, however, was repealed as of January 1, 1983. Ill. Rev. Stat. ch. 37 § 702-3(b); Pub. Act 22-969, eff. Jan. 1, 1983.

Thus, the circumstances of this case can never re-occur and no decision on the merits can have any prospective import.

CONCLUSION

For the reasons stated above, respondents respectfully submit that the Petitions for Certiorari should be denied.

Respectfully submitted,

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In the

Supreme Court of the United States

OCTOBER TERM, 1983

IN RE WALTER POLOVCHAK

(STATE OF ILLINOIS,

Petitioner,

vs.

MICHAEL POLOVCHAK and ANNA POLOVCHAK,

Respondents.)

ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

REPLY TO THE ANSWER TO THE PETITION FOR A WRIT OF CERTIORARI

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ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

REPLY TO THE ANSWER TO THE PETITION FOR A WRIT OF CERTIORARI

Petitioner, the State of Illinois, respectfully submits to this Honorable Court the following reply to Respondents' Answer to the Petition for a Writ of Certiorari.

THE ILLINOIS SUPREME COURT WAS REQUIRED TO FOLLOW THE DUE PROCESS CLAUSE IN ITS DIRECTIONS ON REMAND.

A(1). Due Process

Petitioner has argued that the remand of the Illinois Supreme Court violated the Due Process Clause. Respon-

dents, in their brief in opposition to certiorari, appear to assert that considerations of due process either do not apply or apply only with diminished force to the directions of an appellate court on remand. That idea will not stand analysis for a moment. The United State Constitution is the supreme law of the land, and is binding on all state courts. U.S. Const., Art. VI. Therefore all orders entered in state court, including directions of an appellate court on remand, must meet the requirements of the Due Process Clause.

Respondents first attempt to justify the remand of the Illinois Supreme Court on the grounds that it is necessary to restore the *status quo ante*. That idea may be refuted simply by examining the facts of the case. When this action began, Walter Polovchak was living with his cousin, his parents were preparing to return to the Soviet Union, and Walter was not subject to any kind of state custody or restraint. If respondents had not called in the police, they would have returned to the Ukraine without Walter, and he would have continued to live with his cousin. The remand of the Illinois Supreme Court requires that Walter be forcibly returned to his parents, or, alternatively, be subject to state control or custody until he becomes an adult. Thus the remand orders a drastic change from the *status quo ante*.

Respondents next argue that the remand of the Illinois Supreme Court represents an attempt to allow for intervening circumstances which have arisen while the appeal was pending. Petitioner agrees that appellate courts have the power to consider such intervening circumstances, but would simply point out that no intervening circumstance can justify an unconstitutional order. There is no evidence, and no finding by any court, that Walter

is unable to care for himself, either alone or with the help of relatives. Walter, like many other children, lives with relatives other than his parents. That was the case before this litigation began and, even if it is considered an intervening circumstance, it provides no justification for state control over Walter's life. *O'Connor* v. *Donaldson*, 422 U.S. 563, 576 (1975). Thus no intervening circumstances have occured which provide any constitutional justification for the terms of the remand. If respondents are contending that the state may take control over any child who does not live with his parents, then this Court should grant certiorari in order to reject any such contention.

Respondents' final justification for the remand is that Illinois courts have ". . . inherent plenary jurisdiction to appoint guardians for minors who come before the courts." (Respt. Br. 5) In fact a grant of guardianship in Illinois is controlled by specific Statutory standards. Ill. Rev. Stat., Ch. 37, secs. 702-5, 705-7; Ill. Rev. Stat., Ch. 110 ½, Sec. 11-1 *et. seq.* The Illinois Supreme Court did not pretend to follow those statutes, ignoring, for example, provisions which give a teenage minor the right to nominate his own guardian. Ill. Rev. Stat, Ch. 37, sec. 705-7(2); Ill. Rev. Stat., Ch. 110 ½, sec. 11-5(c). Respondent's position is that a court has plenary power to appoint a guardian for a minor, even without consent of the minor, even without consent of the parents, and even when there is no finding that guardianship is necessary for the protection or welfare of the minor. Such a breathtaking assertion of state power justifies a grant of certiorari.

The Illinois Supreme Court found that under Illinois law the Juvenile Court had no jurisdiction over Walter Polovchak. Then, however, the Illinois Supreme Court remanded to the Juvenile Court with authority to take control over Walter until he becomes an adult. Respondents in their brief have not pointed to any finding by the Illinois Supreme Court to justify such control, and they have not presented any evidence which would justify state control over Walter. This Court should grant certiorari in order to determine that the state may not take control over a minor when there is no finding or evidence that such control is necessary for any purpose.

(2). Ripeness

Respondents argue that this matter is not ripe for review because no one knows what the Cook County Juvenile Court will do on remand. But that is exactly the constitutional problem involved. The Juvenile Court has been given an unlimited grant of authority over Walter's life with nothing to justify that grant of authority.

It is true that on remand the Juvenile Court might do something benevolent (such as allowing Walter to continue to live with relatives) or might do something malevolent (such as ordering Walter to return to the Soviet Union). But even benevolent intentions do not excuse unconstitutional actions. *In re Gault*, 387 U.S. 1, 17-19 (1967). No one would argue that a delinquent minor could be unconstitutionally confined because that confinement might be pleasant or good for him. Walter, who has comitted no crime, is entitled to be free of state custody or control. The Illinois Supreme Court

has not afforded him that right. The constitutional issue is ripe for adjudication because it is state control over Walter's life which offends the Due Process Clause, not the specific form that control might take.

Respondents have not replied to the petitioner's argument that the Illinois Supreme Court has violated Walter's right to familial privacy and to equal protection. Both issues are ripe for adjudication.

(3). Standing

For the past three years the State of Illinois has been legal custodian of Walter Polovchak (although Walter is currently living with relatives). Respondents, however, contend that Walter's legal custodian has no standing to ask that Walter's constitutional rights be respected. That doctrine would certainly be an innovation in American law. The traditional doctrine is that a parent or legal custodian may assert the rights of a minor. F.R.C.P. 17(a). For example, in the famous *Brown* v. *Board of Education* case the petitioners appeared through their parents or guardians. *Brown* v. *Board of Education of Topeka,* 347 U.S. 483, 487 (1954). In addition, the State of Illinois has an interest of its own in seeing that its custody of Walter is either continued or vacated in a constitutional manner.

In any event the question of standing is of no importance at this point, since the question before this Court is whether certiorari should be granted. Certainly the State of Illinois has standing to suggest that there are important issues involved in this case which should be reviewed by this Court. If this Court were to grant certiorari on the issues raised in the State's petition, Wal-

ter could then assert those issues on his own behalf. He would do so because he ". . . has reviewed the State's petition herein, and supports it fully." (Walter's Pet. 9)

(4). Waiver

In the Illinois courts the State argued that Walter Polovchak was a minor in need of supervision under the MINS provisions of the Juvenile Court Act. Ill. Rev. Stat. 1979, Ch. 37, sec. 702-3. At no time did the State argue that the Illinois courts had any power over Walter other than that conferred by the Act. The Illinois Supreme Court ruled that the Juvenile Court had no statutory power over Walter, but remanded to the Juvenile Court anyway, giving it control over Walter's life. Thus the State's position now, that Walter may not be placed in custody without a finding that it is necessary for his welfare or protection, is entirely consistent with every other position it has taken in this case.

B. If Walter Is Forcibly Removed to the Soviet Union, No Federal or State Court Would Have the Power to Protect His Rights.

In its petition the State of Illinois pointed out that the practical effect of the remand could be the forcible and illegal removal of Walter Polovchak from this country. The Illinois Supreme Court ordered that Walter be returned to the custody of his parents. As a practical matter this might well give them the power to remove Walter from this country, since a resident of this country can cross the Canadian or Mexican boarder, enter a foreign embassy or consulate or board a ship or aircraft without even notifying any official of the United States government.

These considerations are relevant to the issue of certiorari since, if Walter is removed from the United States, he will have no remedy in any American court. Certainly this Court may consider on the issue of certiorari whether a petitioner has any other remedy.

Respondents assert that they will obey the federal departure control order now in effect. But it would be optimistic to assume that two Soviet citizens would obey an order that both they and their government have denounced as illegal and a violation of human rights.

In its petition the State of Illinois asserted that the order returning Walter to his parents violates equal protection. (State's Pet. 13) Other minors in Illinois are not required to remain in the home of their parents. Ill. Rev. Stat. 1983, Ch. 37, secs. 703-1.1(c), 703-1.1(d), 702-3. Therefore the constitutionality of that order would be before this Court after a grant of certiorari.

CONCLUSION

For the reasons stated above and in their Petition for a Writ of Certiorari, the State of Illinois respectfully requests that this Honorable Court issue a writ of certiorari to review the judgment and opinion of the Illinois Supreme Court.

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